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50.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

03 12630 DPW

TRIPATH IMAGING, INC.,

Plaintiff,

v.

CYTYC CORPORATION,

Defendant.



1:03CV00550

ORDER

On October 8, 2003, in accordance with 28 U.S.C. § 636(b), a Recommendation of United States Magistrate Judge was filed in response to Defendant CYTYC Corporation's Motion to Dismiss, Transfer, or Stay. For reasons stated therein, the Recommendation of Magistrate Judge concluded that Defendant's motion to transfer should be granted. Plaintiff Tripath Imaging, Inc. filed objections to the Magistrate Judge's recommendation, and Defendant filed a response to Plaintiff's objections. Having reviewed the objections and response, the court hereby adopts the Magistrate Judge's recommendation.

IT IS THEREFORE ORDERED that Defendant's motion to transfer - [8] is granted and the action shall be transferred to the United States District Court for the District of Massachusetts.

This the 30th day of October 2003.

A True Copy
Teste:

John S. Brubaker

United States District Judge

Deputy Clerk

United States District Court

U.S. District Court
District of North Carolina
Post Office Box 2708
Gresham, North Carolina 27402

John S. Brubaker, Clerk

December 18, 2003 3:02 PM

U.S. DISTRICT COURT
DISTRICT OF MASS.

TELEPHONE:
CIVIL (336) 332-6030
CRIM. (336) 332-6020
ADMIN. (336) 332-6000

03 12630 DPW

Clerk, U. S. District Court
John W. McCormack Post Ofc. &
Courthouse, 90 Devonshire Street, Rm 707
Boston, Massachusetts 02109

Dear Mr. Smith:

RE: TRIPATH IMAGING INV. CYTYC CORP. - 1:03CV550

An order has been entered in the Court transferring this case to your district. Enclosed are the following:

1. Certified copy of Order transferring action.
2. Certified copy of docket entries.
3. All parties' documents filed to date in this court.

Please acknowledge receipt one enclosed copy of this letter.

Sincerely,

JOHN S. BRUBAKER, CLERK

By: 
Deputy Clerk

jw

Enclosures

U.S. District Court
Middle District of North Carolina (Durham)

CIVIL DOCKET FOR CASE #: 03-CV-556

FILED
IN CLERK'S OFFICE 18AG
2003 DEC 30 P 2:43
S030
CLOSED

TRIPATH IMAGING, INC v. CYTYC CORPORATION
Assigned to: JUDGE WILLIAM L. OSTEEN
Demand: \$0,000
Lead Docket: None
Dkt# in other court: None

Filed: 06/16/03
Jury demand: Both
Nature of Suit: 830
Jurisdiction: Federal Question

Cause: 15:1125 Trademark Infringement (Lanham Act)

TRIPATH IMAGING, INC.
plaintiff

MICHAEL E. RAY
[COR LD NTC]
CHARLES A. BURKE
[COR LD NTC]
CHRISTOPHER G. DANIEL
[COR LD NTC]
WOMBLE CARLYLE SANDRIDGE & RICE
POD 84
WINSTON-SALEM, NC 27102
336-721-3600

v.

CYTYC CORPORATION
defendant

JOHN B. MORRIS
336-607-7359
[COR LD NTC]
KILPATRICK STOCKTON, L.L.P.
1001 W. FOURTH ST.
WINSTON-SALEM, NC 27101
336-607-7300

DANIEL R. TAYLOR, JR.
[COR LD NTC]
KILPATRICK STOCKTON, L.L.P.
1001 W. FOURTH ST.
WINSTON-SALEM, NC 27101
336-607-7300


WILLIAM F. LEE
[COR LD NTC]
LISA J. PIROZZOLO
[COR LD NTC]
TIMOTHY R. SHANNON
[COR LD NTC]
HALE & DORR, LLP
60 STATE ST.

A True Copy

Teste:

John S. Brubaker, Clerk

By:


Deputy Clerk

Proceedings include all events.

1:03cv550 TRIPATH IMAGING, INC v. CYTYC CORPORATION

BOSTON, MA 02109
617-526-6000

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CYTYC CORPORATION
counter-claimant

JOHN B. MORRIS
336-607-7359
[COR LD NTC]
KILPATRICK STOCKTON, L.L.P.
1001 W. FOURTH ST.
WINSTON-SALEM, NC 27101
336-607-7300

DANIEL R. TAYLOR, JR.
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KILPATRICK STOCKTON, L.L.P.
1001 W. FOURTH ST.
WINSTON-SALEM, NC 27101
336-607-7300

WILLIAM F. LEE
[COR LD NTC]
LISA J. PIROZZOLO
[COR LD NTC]
TIMOTHY R. SHANNON
[COR LD NTC]
HALE & DORR, LLP
60 STATE ST.
BOSTON, MA 02109
617-526-6000

v.

TRIPATH IMAGING, INC.
counter-defendant

MICHAEL E. RAY
[COR LD NTC]
CHARLES A. BURKE
[COR LD NTC]
CHRISTOPHER G. DANIEL
[COR LD NTC]
WOMBLE CARLYLE SANDRIDGE & RICE
POD 84
WINSTON-SALEM, NC 27102
336-721-3600

Proceedings include all events.

1:03cv550 TRIPATH IMAGING, INC v. CYTYC CORPORATION

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6/16/03 -- **Case assigned to Magistrate Judge Eliason. AO Code 18AG
(nd) [Entry date 06/17/03]

6/16/03 1 COMPLAINT with attached Exhibits A-E; Filing Fee \$150.00
Receipt #77851; jury demand (nd) [Entry date 06/17/03]

6/16/03 2 SUMMONS issued for CYTYC CORPORATION (nd)
[Entry date 06/17/03]

6/16/03 -- Notice of Right to Consent 28 USC 636(c)(2) (nd)
[Entry date 06/17/03]

6/16/03 -- CASE SELECTED FOR MEDIATION (nd) [Entry date 06/17/03]

6/16/03 -- STANDING ORDER 30 CASE (nd) [Entry date 06/17/03]

6/19/03 3 AFFIDAVIT OF SERVICE as to CYTYC CORPORATION executed on
6/18/03 by personal delivery on Gina Fox, Agent in Charge.
Answer due on 7/8/03 for CYTYC CORPORATION (nd)
[Edit date 06/25/03]

6/25/03 4 NOTICE of Attorney Appearance for CYTYC CORPORATION by
DANIEL R. TAYLOR JR., JOHN B. MORRIS (lks)
[Entry date 06/26/03]

6/27/03 5 MOTION by TRIPATH IMAGING, INC for Limited Expedited
Discovery from defendant Cytyc Corp. for a period of thirty
(30) days with respect to TriPath's claim for patent
infringement. (lks) [Entry date 06/30/03]

6/27/03 6 BRIEF (with Exhibit A attachment) by TRIPATH IMAGING, INC
in support of [5-1] motion for Limited Expedited Discovery
from defendant Cytyc Corp. for a period of thirty (30) days
with respect to TriPath's claim for patent infringement by
TRIPATH IMAGING, INC (lks) [Entry date 06/30/03]

6/27/03 7 DECLARATION (with Exhibits A thru D attachments) of Stephen
P. Hall in support of [5-1] motion for Limited Expedited
Discovery from defendant Cytyc Corporation for a period of
thirty (30) days with respect to TriPath's claim for patent
infringement by TRIPATH IMAGING, INC (lks)
[Entry date 06/30/03]

7/1/03 8 MOTION by CYTYC CORPORATION to Dismiss this action without
prejudice, or in the alternative Transfer or to Stay
Proceedings in this action pending the outcome of a case
pending in the United States District Court of
Massachusetts. (lks) [Entry date 07/03/03]

Proceedings include all events.

1:03cv550 TRIPATH IMAGING, INC v. CYTYC CORPORATION

18AG
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- 7/24/03 15 BRIEF IN RESPONSE (with Attachments 1 thru 3) by TRIPATH IMAGING, INC to [8-1] motion to Dismiss this action without prejudice by CYTYC CORPORATION, [8-2] motion Transfer or to Stay Proceedings in this action pending the outcome of a case pending in the United States District Court of Massachusetts by CYTYC CORPORATION (lks) [Entry date 07/25/03]
- 7/24/03 16 DECLARATION of George E. Herrington Jr. (with Exhibits A thru E attachments) in support of [15-1] Response by TRIPATH IMAGING, INC to defendants Motion to Dismiss, or in the alternative, transfer or stay proceedings. (lks) [Entry date 07/25/03] [Edit date 08/05/03]
- 7/24/03 17 ANSWER to Complaint; jury demand and COUNTERCLAIM by CYTYC CORPORATION (Attorney WILLIAM F. LEE) against TRIPATH IMAGING, INC. Answer due 8/13/03 for TRIPATH IMAGING, INC (nd) [Entry date 07/25/03]
- 7/28/03 18 NOTICE TO PARTIES RE STANDING ORDER 30. (dm)
- 7/30/03 19 REPLY, with Exhibits A-D, by TRIPATH IMAGING, INC in support of [5-1] motion for Limited Expedited Discovery from defendant Cytyc Corp. for a period of thirty (30) days with respect to TriPath's claim for patent infringement (km) [Entry date 08/01/03]
- 8/6/03 20 REPLY (w/Exhibits 1 & 2 attachments) by CYTYC CORPORATION to TRYPATH'S OPPOSITION to [8-1] motion to Dismiss this action without prejudice and, [8-2] motion Transfer or to Stay Proceedings in this action pending the outcome of a case pending in the United States District Court of Massachusetts by CYTYC CORPORATION (lks) [Entry date 08/08/03] [Edit date 08/08/03]
- 8/7/03 21 REPLY by TRIPATH IMAGING, INC to [17-2] counter claim by CYTYC CORPORATION (lks) [Entry date 08/08/03]
- 8/12/03 -- Motion(s) referred: [5-1] motion for Limited Expedited Discovery from defendant Cytyc Corp. for a period of thirty (30) days with respect to TriPath's claim for patent infringement referred to MAG/JUDGE RUSSELL A. ELIASON, [8-1] motion to Dismiss this action without prejudice referred to MAG/JUDGE RUSSELL A. ELIASON, [8-2] motion Transfer or to Stay Proceedings in this action pending the outcome of a case pending in the United States District Court of Massachusetts referred to MAG/JUDGE RUSSELL A. ELIASON (ww)
- 8/21/03 22 MOTION by TRIPATH IMAGING, INC to schedule an Initial Pretial Conference in this action no later than September 23, 2003. (lks) [Entry date 08/22/03]

Proceedings include all events.

1:03cv550 TRIPATH IMAGING, INC v. CYTYC CORPORATION

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9/26/03 30 DECLARATION of Thomas Gahm in support of [27-1] motion for Temporary Restraining Order by TRIPATH IMAGING, INC, [27-2] motion Preliminary Injunction against defendant Cytyc Corp, et al. from making, using importing, offering for sale, or selling Cytyc's ThinPrep Imaging System in the United States by TRIPATH IMAGING, INC (lks) [Entry date 09/29/03]

9/30/03 -- Telephonic Notice to Atty. Charles Burke and Atty. Daniel Taylor Re Motion Hearing set for 10:00 10/15/03 in GREENSBORO #1 COURTROOM for [27-1] motion for Temporary Restraining Order, set for 10:00 10/15/03 in GREENSBORO #1 COURTROOM for [27-2] motion for Preliminary Injunction against defendant Cytyc Corp, et al. from making, using importing, offering for sale, or selling Cytyc's ThinPrep Imaging System in the United States before JUDGE WILLIAM L. OSTEN (rw)

9/30/03 -- Deadline updated; Response to Motion set for 10/10/03 for [27-1] motion for Temporary Restraining Order, set for 10/10/03 for [27-2] motion for Preliminary Injunction against defendant Cytyc Corp, et al. from making, using importing, offering for sale, or selling Cytyc's ThinPrep Imaging System in the United States (rw) [Entry date 10/03/03]

9/30/03 -- Motion submission: [27-1] motion for Temporary Restraining Order submitted, [27-2] motion for Preliminary Injunction against defendant Cytyc Corp, et al. from making, using importing, offering for sale, or selling Cytyc's ThinPrep Imaging System in the United States submitted, [24-1] motion for expedited Briefing Schedule and expedited consideration of Plaintiff's Motion to schedule an Initial Pretrial Conference (Pldg #22) submitted to Judge Osten (rw) [Entry date 10/03/03]

10/6/03 31 MOTION by CYTYC CORPORATION for William F. Lee to Appear Pro Hac Vice as counsel for defendant. (lks) [Entry date 10/08/03]

10/6/03 32 MOTION by CYTYC CORPORATION for Lisa J. Pirozzlo to Appear Pro Hac Vice as counsel for defendant. (lks) [Entry date 10/08/03]

Proceedings include all events.

1:03cv550 TRIPATH IMAGING, INC v. CYTYC CORPORATION

18AG
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- 10/10/03 39 DECLARATION by E. Eugene Baillie, M.D. In Opposition (w/Exhibit Attachments A & B) [27-1] motion for Temporary Restraining Order [27-2] motion for Preliminary Injunction against defendant Cytyc Corp, et al. from making, using importing, offering for sale, or selling Cytyc's ThinPrep Imaging System in the United States by TRIPATH IMAGING, INC (lks)
- 10/10/03 40 DECLARATION (w/Exhibit Attachment A) by Diane D. Davey, M.D. In Opposition to [27-1] Motion for Temporary Restraining Order, [27-2] motion for Preliminary Injunction against defendant Cytyc Corp, et al. from making, using importing, offering for sale, or selling Cytyc's ThinPrep Imaging System in the United States by TRIPATH IMAGING, INC (lks)
- 10/10/03 41 DECLARATION of James Linder, M.D. In Opposition (w/Exhibit Attachments A thru G) to [27-1] motion for Temporary Restraining Order, [27-2] motion for Preliminary Injunction against defendant Cytyc Corp, et al. from making, using importing, offering for sale, or selling Cytyc's ThinPrep Imaging System in the United States by TRIPATH IMAGING, INC (lks) [Entry date 10/14/03]
- 10/10/03 42 DECLARATION by Ralph Richart, M.D. In Opposition (w/Exhibit Attachment A) to [27-1] motion for Temporary Restraining Order, [27-2] motion for Preliminary Injunction against defendant Cytyc Corp, et al. from making, using importing, offering for sale, or selling Cytyc's ThinPrep Imaging System in the United States by TRIPATH IMAGING, INC (lks) [Entry date 10/14/03]
- 10/10/03 43 DECLARATION by Kenneth R. Castleman, Ph.D. (w/Exhibit Attachments 1 thru 14) In Opposition to [27-1] motion for Temporary Restraining Order, [27-2] for Preliminary Injunction against defendant Cytyc Corp, et al. from making, using importing, offering for sale, or selling Cytyc's ThinPrep Imaging System in the United by TRIPATH IMAGING, INC (Declaration located in expandable file) (lks) [Entry date 10/14/03] [Edit date 10/14/03]
- 10/10/03 44 DECLARATION Patrick J. Sullivan In Opposition to [27-1] motion for Temporary Restraining Order by TRIPATH IMAGING, INC, [27-2] motion for Preliminary Injunction against defendant Cytyc Corp, et al. from making, using importing, offering for sale, or selling Cytyc's ThinPrep Imaging System in the United States by TRIPATH IMAGING, INC (lks) [Entry date 10/14/03]
- 10/14/03 45 MOTION by TRIPATH IMAGING, INC for Continuance of October 15, 2003 hearing on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction; and (2) limited expedited discovery on new issues raised by defendant in its initial opposition to the motion. (lks)

Proceedings include all events.

1:03cv550 TRIPATH IMAGING, INC v. CYTYC CORPORATION

18AG
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SO30

10/14/03 46 BRIEF by TRIPATH IMAGING, INC in support of [45-1] motion for Continuance of October 15, 2003 hearing on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction; and (2) limited expedited discovery on new issues raised by defendant in its initial opposition to the motion by TRIPATH IMAGING, INC (lks)

10/14/03 47 ORDER granting signed by MAG/JUDGE RUSSELL A. ELIASON that William F. Lee and Lisa J. Pirozzolo with the firm of Hale and Dorr LLP in Boston, Massachusetts are hereby admitted pro have vice for the purpose of representing Defendant Cytyc in this action. Ccs dist [EOD Date 10/14/03] (lks)

10/14/03 -- Telephone Conference with Attorneys Michael Ray, Charles Burke, Daniel Taylor and John Morris Held with JUDGE WILLIAM L. OSTEN Re: Motion to Continue Hearing scheduled for 10/15/2003. The hearing scheduled for 10/15/2003 has been cancelled. (rw)

10/17/03 48 OBJECTIONS (w/Exhibit Attachments 1-3 A thru E) by TRIPATH IMAGING, INC to [33-1] Recommendation of United Magistrate Judge (located in expandable file) (lks)
[Entry date 10/20/03] [Edit date 10/20/03]

10/22/03 49 RESPONSE by defendant CYTYC CORPORATION to [48-1] OBJECTIONS TO RECOMMENDATION by TRIPATH IMAGING, INC (lks)

10/30/03 50 ORDER signed by JUDGE WILLIAM L. OSTEN that the Magistrate Judge's recommendation is adopted and that the deft's motion to transfer [8] is granted and the action shall be transferred to the U. S. District Court for the District of Massachusetts. Ccs dist. [EOD Date 10/31/03] (jw)
[Entry date 10/31/03]

10/30/03 -- CASE CLOSED. Closing Code 10 (jw) [Entry date 10/31/03]

10/31/03 51 SUGGESTION (with Exhibit Attachment A) OF SUBSEQUENTLY DECIDED AUTHORITY by defendant CYTYC CORPORATION referring to Motion to Dismiss the Massachusetts action filed by TRIPATH IMAGING. (lks) [Entry date 11/03/03]

11/10/03 -- CASE REFERRED to Mag/Jud Eliason (rw)

11/13/03 -- CASE NO LONGER REFERRED to Mag/Jud. (rw)

12/18/03 -- Certified copy of Order transferring action; Certified copy of docket entries and all parties and documents filed to date in this court. (jw)